IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.62281-M of 2005 (O&M)

Date of Decision: November 08, 2006

Dalip Chand Jaggi and others

...Petitioners

VERSUS

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr.Sudeep Mahajan, Advocate,
for the petitioners.

Mr.Vikas Chaudhary, AAG, Haryana,
for respondent No.1.

Mr.Ashwani Bakshi, Advocate,
for respondent No.2.

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The petitioners herein have raised a serious grouse against the action of respondent No.2 in lodging the impugned FIR after fourteen years of her marriage and on that count mainly have sought quashing of the same.

Sanjay Jaggi (non-petitioner) got married to Smt.Rachna Jaggi on 18.1.1991. Dalip Chand Jaggi (petitioner No.1) and Smt.Parkash Jaggi (petitioner No.2), father and mother are aged 85 years and 80 years. Their eldest son Dinesh Jaggi (petitioner No.3) is now 51 years old. They are highly aggrieved against the action of respondent No.2 to drag them in the present criminal proceedings that too after fourteen

years of her marriage and on that count, they have very forcefully submitted that the present FIR is nothing but an abuse of process of Court as far as they are concerned. It is stated that Sanjay Jaggi, husband of respondent No.2, lived at Agra after their marriage and was blessed with a female child in September, 1991. Their daughter accordingly is now about fourteen years old and the son born on 9.8.2002 is now four years old. Sanjay Jaggi alongwith his wife and family have been living separately from petitioners No.1 and 2 and so also from elder brother Dinesh Jaggi (petitioner No.3) and his wife Smt.Rita Jaggi (petitioner No.4). Petitioners No.3 and 4 had got married in the year 1979 and their son is presently studying in the Hindustan Engineering College, Mathura Road, Agra and is aged about 21 years. Another son of their (petitioners No.3 and 4) is about 13 years old, which may clearly indicate that petitioner No.3, elder brother of Sanjay Jaggi, husband of respondent No.2, are separate in residence as well as in business. This has been so claimed in the petition, wherein it is stated that petitioner No.3 is a commission agent having a separate and completely independent business at Agra. He had separated the business from his brother, namely, Sanjay Jaggi in the year 1992 and is running a partnership firm of commission agent with his father under the name and style of M/s Dalip Chand Jaggi and Co. Another fresh partnership deed had also been formed in the year 1998 and the copy thereof has been annexed with the record as Annexure P-2. It is thus claimed that the present petitioners are not only living separately from Sanjay Jaggi, but have a separate and independent business. Respondent No.2 has been living with her parents at H.No.C-7, Chander Lok Colony, Akash Enclave, Jaipur House, Agra since 1997-98. In fact respondent No.2 and her husband had earlier sold their

house in the year 1997, whereafter they started living in the above-mentioned house. This marriage between respondent No.2 and Sanjay Jaggi had smoothly continued over a period of fourteen years when now the present FIR has been lodged against the petitioners by respondent No.2 on 4.10.2005 under Sections 323, 498-A and 406 IPC. Fourteen years is too a long period for respondent No.2 to make a complaint with regard to allegations of cruelty and criminal breach of trust under Sections 498-A and 406 IPC. Petitioners are right in complaining that there is no justification for lodging this FIR after this prolonged delay and that in itself be an indication or evidence of allegations being false or at least that it is a made up complaint. The perusal of the FIR would show that grievance has been raised of incidents, which took place in September, 1991, May, 1992, February, 2002 and August, 2004 for which the FIR was lodged on 4.10.2005. Petitioners No.1 and 2, who are aged and bound to be infirm are not un-justified in claiming that they would be least interested in demand of dowry or for being cruel to respondent No.2 at this juncture of their lives. They are, admittedly, 85 and 80 years old. There is not much serious dispute that all the petitioners are separate in business from Sanjay Jaggi, husband of respondent No.2 and as such could not have been in any position to commit the offences as alleged against them.

Notice was issued in this case and reply has been filed on behalf of respondent No.2. It has been stated that the family is joint in business as well as in living, though it has not been denied that on papers there are two firms, which are being run by petitioners No.1 and 3. It is claimed that this arrangement is for the purposes of business only. Justifying the delay of fourteen years in lodging the present FIR, which has

contained the allegations of incidents that took place in 1991-92 etc. it has been stated that respondent No.2 gave ample opportunity to the petitioners to mend their ways, but ultimately she was forced to approach the police when her torture and humiliation did not stop.

Tolerance for fourteen years appears rather too long to wake up. The offences alleged against the petitioners are under Sections 498-A and 406 IPC. The aspect of limitation, as prescribed under Section 467 Cr.P.C., would also come into play. An incident, which is alleged to have taken place in the year 1991-92, has been racked up in the year 2005. There has been no justification except the one, noticed above, for this long delay in making the complaint. There appears to be a lull between 1992 to February, 2002, which is the date of torture during the second pregnancy of respondent No.2. Thereafter allegation of demand for starting a separate business for Sanjay Jaggi has been made, which statedly was on 10.8.2004. These peculiar facts would not only invite the statutory bar laid down under the provisions of Section 468 Cr.P.C. but would give rise to another principle of implied condonation of these allegations. If no action was taken on something, which took place in the year 1991-1992, till 2005, it would, by implication, mean that respondent No.2 had condoned this conduct even if it revealed any criminality. Similarly the allegations, which pertained to the year 2002 or September, 2004, may get effected due to implied conduct of respondent No.2 in condoning these allegations for which she had kept quiet till October, 2005. It may also need a notice that under the old Code, there was no provision laying down period of limitation for the purpose of taking cognizance as now available in the form of Section 468 Cr.P.C. This provision has now been made barring the taking of

cognizance of offence after lapse of a period as laid down under the Section. A varying period of limitation has now been prescribed for different offences on the basis of punishment provided for offences punishable upto three years rigorous imprisonment. Accordingly, now three years is the period of limitation in respect of those offences, which are punishable with an imprisonment for a term exceeding one year but not exceeding three years. The offence under Sections 498-A and 406 IPC are punishable with imprisonment upto three years. Accordingly, it is to be seen whether the provisions of Section 468 Cr.P.C. would have any effect in the present case on the impugned FIR. Allegation of cruelty is made in regard to the incident of September, 1991. This would clearly be barred for taking the cognizance in view of the provisions of Section 468 Cr.P.C. Allegation of torture made relates to an incident, which took place in February, 2002 and would get effected by the operation of the provisions of Section 468 Cr.P.C. Apart from these considerations, it cannot be lost sight that petitioners No.1 and 2 in this case are really infirm and old. Making them to face prosecution on the basis of such stale allegations specially in view of the provisions of the Code relating to bar of taking cognizance would certainly lead to abuse of process of the Court. There has also not been any denial to the documentary evidence placed on record to show that all the petitioners are having their separate and independent residence as well as business from respondent No.2 and her husband Sanjay Jaggi. There is much substance in the submissions made on behalf of the petitioners that they were in no position either to commit cruelty towards respondent No.2 or to demand any dowry or to commit any criminal breach of trust of any dowry article as has been alleged.

Taking into consideration these facts and circumstances of this case and having regard to the old age of petitioners No.1 and 2, I am inclined to interfere in the matter and would quash the present FIR qua the petitioners.

The present petition is accordingly allowed.

November 08, 2006 (RANJIT SINGH)
ramesh JUDGE